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2/13/20

[REDACTED]

In connection with the above-named case, the People voluntarily provide the following information regarding:

MOS NAME: ESPINAL, EDWIN

MOS TAX: 934831

in satisfaction (to the extent applicable) of their constitutional, statutory, and ethical obligations. Further, the People reserve the right to move in limine to preclude reference to this information, or otherwise to object to its use and/or introduction into evidence.

Disclosure # 1:

By an Amended Decision and Order, dated November 3, 2016, Acting Supreme Court Justice Michael Gary granted a motion to suppress evidence and statements following a Dunaway/Mapp/Huntley hearing in People v. XXX (Kings County Indictment No. 2702/16). Police Officer Steven Lopez, shield number 11248, and Detective Edwin Espinal, shield number 4873, testified for the People. The defendant testified on his own behalf and introduced into evidence the backpack that was the subject of the police search and from which a loaded firearm was recovered. Justice Gary found that PO Lopez and Det. Espinal "were not credible in portions of their testimony," while the defendant was credible in all aspects of his. The case against the defendant was subsequently dismissed in January 2017. The decision is attached hereto.

Disclosure # 2:

THE NYPD SUBSTANTIATED AN ALLEGATION (2) AGAINST MOS ESPINAL, ARISING FROM 10/6/2005:

ALLEGATION 1: DISPUTED SUMMONS

ALLEGATION 2: MISSING PROPERTY FROM PERSON

ACTION TAKEN: CD ISSUED.

Disclosure # 3:

MOS ESPINAL PLED GUILTY TO THE FOLLOWING DEPARMTENTAL CHARGES AND SPECIFICATIONS:

- 1.MOS ESPINAL, ASSIGNED TO THE 77TH PRECINCT, ON OR ABOUT DECEMBER 1, 2008 THROUGH DECEMBER 31, 2009, DID FAIL AND NEGLECT TO MAINTAIN SAID OFFICER'S ACTIVITY LOG IN THAT SAID OFFICER COULD NOT LOCATE HIS ACTIVITY LOGS AND PROVIDE THEM FOR INSPECTION UPON REQUEST, WHEN HE FAILED TO STORE HIS ACTIVE ANDCOMPLETED ACTIVITY LOGS IN HIS DEPARTMENT LOCKER, REQUIRED.
 2. MOS ESPINAL, ASSIGNED AS INDICATED IN SPEC.#1, ON OR ABOUT APRIL 1, 2009, SCHEDULED TO PERFORM A TOUR OF 1400 HOURS TO 2235 HOURS WAS ABSENT FROM SAID ASSIGNMENT OF 1400 HOURS AND DID NOT REPORT UNTIL 1425 HOURS, A PERIOD OF TWENTY-FIVE (25) MINUTES ABSENT WITHOUT LEAVE.
 - 3.MOS ESPINAL, ASSIGNED AS INDICATED IN SPEC.#1, ON OR ABOUT JANUARY 1, 2008 THROUGH DECEMBER 5, 2008, DID KNOWINGLY ASSOCIATE WITH A PERSON REASONABLY BELIEVED TO BE ENGAGED IN, LIKELY TO ENGAGE OR TO HAVE ENGAGED IN CRIMINAL ACTIVITIES.
 - 4.MOS ESPINAL, ASSIGNED AS INDICATED IN SPEC.#1, ON OR ABOUT THE DATES INDICATED IN SPEC.#3, DID WRONGFULLY AND WITHOUT JUST CAUSE HAVE AN INTEREST IN OR AN ASSOCIATION WITH PREMISES ENGAGED IN ILLEGAL GAMBLING OPERATIONS, TO WIT: SAID POLICE OFFICER FREQUENTED A SOCIAL CLUB LOCATED AT 258 SCHEEFER STREET, IN KINGS COUNTY, WHERE HE ENGAGED IN ILLEGAL FOR MONEY.
 - 5.MOS ESPINAL, ASSIGNED AS INDICATED IN SPEC.#1, ON OR ABOUT DECEMBER 6, DID WRONG- FULLY ENGAGE IN CONDUCT PREJUDICIAL TO THE GOOD ORDER, EFFICIENCY OR DISCIPLINE OF THE DEPARTMENT, TO WIT: SAID POLICE DURING THE COURSE OF A MURDER INVESTIGATION INTO THE DEATH OF THE PERSON KNOWN TO THE NYPD (SEE #3 ABOVE) WAS INTERVIEWED BY DETECTIVES ASSIGNED TO THE BROOKLYN NORTH HOMICIDE TASK FORCE AND AFTER BEING ASKED WHETHER SAID GAMBLED OR HAD ANY FINANCIAL PROBLEMS FAILED TO DISCLOSE POTENTIALLY RELEVANT INFORMATION SPECIFICALLY THAT HE KNEW SAID PERSON RAN AN ILLEGAL GAMBLING OPERATION.
- ACTION TAKEN: FORFEITURE OF FIFTEEN VACATION DAYS; FORFEITURE OF THIRTY DAYS OF PRE-TRIAL SUSPENSION, AND ONE YEAR DISMISSAL PROBATION.

Disclosure #4:

NYPD SUBSTANTIATED THE FOLLOWING ALLEGATION AGAINST MOS ESPINAL;
ALLEGATION: ON 02/01/11, MOS ESPINAL FAILED TO ARRIVE ON TIME FOR THE START OF HIS SCHEDULED 1500 HOURS X 2323 HOURS TOUR OF DUTY AND DID NOT SUBMIT A UF-28 OR ADJUST HIS TOUR.
ACTION TAKEN: FORFEITURE OF THREE (3) VACATION DAYS.

Disclosure # 5:

THE NYPD SUBSTANTIATED AN ALLEGATON AGAINST MOS ESPINAL, ARISING FROM 3/4/2016:
ALLEG: OTHER DEPT RULES/PROCEDURES VIOLATION (FAIL TO INFORM DISTRICT ATTORNEY THAT INFORMATION REGARDING A FIREARM WAS OBTAINED THIRD PARTY
DISPOSITION: SUBSTANTIATED

Disclosure # 6:

The People are aware of the following federal civil rights action(s) and/or state tort civil lawsuit(s) in which the indicated officer has been named as an individual defendant. Note, the disposition information may not be current:

PLAINTIFF	DOCKET	COURT	FILED	DISPOSED	DISPOSITION
Antoine Flowers, et al.	28318/2018E	Sup. Ct., Bronx Cty.	9-4-18	7-3-19	Settlement
Christian McKnight	17-CV-2481	S.D.N.Y.	4-5-17	1-17-18	Dismissal without prejudice for failure to prosecute
Bernard Pleasant	300135/2016	Sup. Ct., Bronx Cty.	1-28-16	-	<i>Pending, next on 02/19/2020</i>
Courtney Simon, et al.	14-CV-8391	S.D.N.Y.	10-21-14	12-6-17	Settlement without admission of fault or liability
Jeffrey Brown	17-CV-2508	S.D.N.Y.	4-7-17	4-25-17	Consolidated with 14-CV-8391
Julian Pruna	13-CV-426	E.D.N.Y.	1-24-13	11-13-13	Settlement, without admission of fault or liability
Ramon Liriano	12-CV-913	E.D.N.Y.	2-24-12	10-12-12	Settlement, without admission of fault or liability
Dino Phillips	10-CV-2330	E.D.N.Y.	5-21-10	8-7-12	Judgment for the defendants, on a jury verdict
Curtis James, et al.	07-CV-3752	E.D.N.Y.	9-7-07	5-5-08	Settlement, without admission of fault or liability
Derrick Robinson	304786/2015	Bronx Co. Sup. Ct.	11-9-15	9-11-19	Settlement
James Dixon	24937/2015	Bronx Co. Sup. Ct.	12-23-15	11-17-17	Settlement
Leroy Nugent	300073/2017	Bronx Co. Sup. Ct.	2-2-17	7-3-19	Settlement
Cuame Nelson	504911/2017	Kings Co. Sup. Ct.	3-24-17	-	<i>Pending, next on 03/03/2020</i>

Eric Gonzalez
District Attorney
Kings County

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CRIMINAL TERM PART 12

-----X
THE PEOPLE OF THE STATE OF NEW YORK :

-against-

AMENDED*
DECISION AND ORDER
Dunaway/Mapp/Huntley

JULIAN DARNLEY

Defendant

: IND. NO. 2701-2016
:
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MICHAEL A. GARY, J.

At a *Dunaway/Mapp/Huntley* hearing on September 14, 2016 this court heard the testimony of P.O. Steven Lopez and Det. Edwin Espinal for the People. The defendant testified and introduced into evidence the backpack which was the subject of the police search and from which a loaded firearm was recovered. As set forth in the following analysis, the court finds P.O. Lopez and Det. Espinal were not credible in portions of their testimony and finds Julian Darnley was completely credible in his.

On March 26, 2016, P.O. Steven Lopez, (hereafter, Lopez) Det. Edwin Espinal (hereafter, Espinal) and Lieutenant To were assigned to the Citywide Anticrime unit. They were riding in an unmarked car in the Brownsville section of Brooklyn at approximately 4:00 a.m., when Lopez observed a black Toyota Camry with New York livery plates make a left turn from Eastern Parkway towards Ralph Avenue without signaling. With lights and sirens, the police then made a pretextual, but clearly legal car stop at the corner of East New York and Ralph Avenues, for failing to signal.

Lopez approached the driver, and Espinal approached the defendant, a male black in his 20's, the sole rear passenger, who was seated directly behind the driver. Lopez said the

driver's window was down and he smelled marijuana emanating from the vehicle. He observed no smoke and saw no physical evidence of marijuana in the car. He never stated whether the marijuana smell was of raw or burnt marijuana. Significantly, though he did ask for license and registration, he did not ask the driver to step out of the vehicle to conduct a search of the driver's area for marijuana.

Espinal approached the defendant's rolled up window while the defendant was on his cell phone. He asked the defendant to roll down his window and put his cell phone away. Defendant complied and put his phone in his right pants pocket. Contrary to Espinal's testimony, the defendant claimed that the backpack was on the car's floor at the time and not being clutched by the defendant in his lap. Significantly, Espinal claimed, that with the window down, he smelled an odor of marijuana but could not tell whether it was burnt or from a large amount of un-smoked marijuana. He saw no smoke in the car or any physical evidence of marijuana use, such as joints or ashes. Espinal asked the defendant if he could please step out of the vehicle. The defendant asked why. Espinal explained it was a routine traffic stop and it was for everybody's safety. The defendant complied.

While standing by the open car door Espinal asked the defendant if he had anything on him and the defendant replied "weed". Espinal asked to see the bag, which defendant agreed to, but instead Espinal patted him down where he felt a soft bulge in his pants pocket. After defendant's arrest, subsequently removed from the defendant's pocket was a ziplock bag of marijuana, approximately 2 inches by 2 inches, the only marijuana recovered in this case.

Lopez testified that he saw Espinal take the defendant out of the passenger side and

then Lopez took the defendant to the back of the car with the defendant facing away from the vehicle. While standing there, Lopez asked the defendant if he had been smoking "weed" and the defendant replied he had been with some friends smoking "weed" prior to getting picked up. Lopez saw the defendant turn his head back towards the Camry and questioned Lopez why Espinal was searching his backpack.

Espinal testified that once the defendant was with Lopez, he entered the rear seat of the car to locate the source of the marijuana smell. He was evasive on cross-examination as to whether the smell of marijuana diminished after the defendant was moved to the back of the vehicle. Espinal testified he smelled a faint odor of marihuana coming from the backpack in the rear of the vehicle. He picked it up, squeezed it, opened it, saw no marijuana, but felt it was heavy. He did not say it was the heaviness of a brick of marihuana, rather, he offered the following: "Whatever was in the bag wasn't enough to explain why it was so heavy; that's why I grabbed it from the bottom." (T. page 50 lines 20-22).


The actual discovery and recovery of the firearm from the backpack presents the starkest contrast in the testimony of Espinal and the defendant. Espinal testified that he identified the heavy object in the backpack as a firearm when he put his finger through a small hole in the bottom of the backpack and felt the gun's trigger guard and slide lock. Espinal denied that he actually removed the firearm from the backpack by cutting open a compartment with a knife as the defendant testified. The backpack in evidence has no hole in the bottom and reflects an inside compartment where the lining was cut open by some sort of sharp object.

In conclusion, this court finds that the actions of the police here were clearly focused from the beginning on searching a young black man riding in a livery cab at 4:00 a.m. in Brownsville. There was no basis for Espinal to ask the defendant to exit the car and pat him down. *See People v. Leary*, 255 AD2d 527 (2d Dept., 1998). It is most significant that neither officer testified that they smelled marijuana on the defendant's clothes - something the defendant readily admitted on cross examination must have occurred, since he had been smoking "pungent" marijuana in an apartment with friends shortly before he was picked up by the livery cab. If indeed the police had no idea where the marijuana smell was coming from and whether it was caused by a large quantity of raw marijuana, it is very significant that there was such disparate treatment of the defendant and the livery cab driver. Only the defendant was asked to exit the car. The court finds that if the smell of marijuana was only on defendant's clothes, there was no basis to frisk the defendant on these facts and thus, no probable cause to search his backpack. *See also, People v. Smith*, 98 AD3d 590 (2d Dept, 2012).

Accordingly, the motion to suppress is granted in all respects.

The foregoing constitutes the decision and order of the court.

Dated: Brooklyn, New York
November 3, 2016



MICHAEL A. GARY, J. S. C.

* After completing the testimony, including that of the defendant, in the *Dunaway/Mapp/Huntley* suppression hearing conducted by this court on September 15, and 16, 2016 the court heard oral argument. The case was adjourned for decision to October 27, 2016 for decision, and invited both sides to submit case law in support of their arguments.

Subsequently, the court advanced the case, in order to issue its decision (dated October 5, 2016) since it determined that the motion to suppress should be granted .

The People have filed a letter with the court asking it to consider some additional case law that had not been submitted because the case was advanced. Upon receipt of the People's letter dated October 27, 2016, defense counsel was contacted and asked if he wished to respond. He emailed his response, indicating that he did not wish to submit any other case law for the court's consideration.

In reviewing the People's case law, it became apparent to the court that the decision it rendered previously did not emphasize adequately the findings of fact relating to the credibility of the witnesses. In finding the defendant wholly credible, the court must stress that the facts of the encounter BEFORE Mr. Darnley was asked to exit the automobile are critical.

The defendant testified that the police officers questioned him, then watched him put his cell phone away into his right hand pocket. Thus, when he was lawfully asked to exit the car, the police already knew what the bulge in his right pocket was. There was no basis to then inquire if the defendant "had any weed", *See People v. Garcia*, 20 NY3d 317 (2012). This court did not find credible the testimony of the police witnesses that they smelled marijuana emanating from the vehicle. (See discussion on Page 4, above). Because this court finds that the police had no basis to inquire about the marijuana in the defendant's pants pocket, the subsequent search and seizure of the defendant's bag and eventually the gun, was improper. The defendant maintains the bag was at all times on the floor in front of him. There is no testimony that he made any movement indicating nervousness, or that he was fidgeting in a way that might have indicated that anything illegal was in the bag, nor did the defendant make any effort to conceal it.

Based on the foregoing, the court abides by its original determination.